BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS
DATE : 29.10.2008
CORAM
THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN
C.A.No.154 of 2002
Employees State Insurance Corporation
rep by its Inspector, Hosur. .. Appellant / Complainant

Vs.

1.M/s.SriRaghavenra Theatre,
42/1, Santhi Nagar, Hosur.

2.V.Lakshmipathy,
Managing Partner,
Sri Ragevendra Theatre,
2/1, Santhi Nagar, Hosur. .. Respondents / Accused.

Prayer :- This appeal has been preferred under 378 of Cr.P.C., against the judgment dated 04.08.2000 in C.C.No.173 of 1996 on the file of the Court of Judicial Magistrate No.II, Hosur.

For Appellant : Mrs.S.Jayakumari, Advocate
For Respondents : Mr.D.Dorairajan, Advocate

JUDGMENT
This appeal has been directed against the Judgment in C.C.No.173 of 1996 on the file of the Court of Judicial Magistrate No.II, Hosur, Dharmapuri District. The complainant had lodged the prosecution against the accused under Section 85 (a) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act'), for the failure to remit 7.25 % of the ESI contribution from out of the ESI contribution collected from the employees, who were found working at the time of inspection by the Inspector of ESI P.W.1.

2.After taking cognizance of the offence and after securing the attendance of the accused, the learned Judicial Magistrate had furnished copies of the documents under Section 207 of Cr.P.C., explained the offence charged against the accused. When questioned, the accused pleaded not guilty. Before the trial Court, on the side of the complainant P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.24 were marked. On the side of the accused, the Managing Director of A1 was examined as D.W.1 and Ex.R.1 to Ex.R.8 were marked. After going through the evidence both oral and documentary, the trial Court on the basis of the ratio decidendi in the ratio relied on on the side of the accused in I.L.R. 88 Karnataka 180J, has held that the fact that ESI Coporation has failed to furnish the particulars of the employees, who were working at the time of the inspection of P.W.1 is fatal to the case of the prosecution, had dismissed the complaint thereby acquitting the accused under Section 235(1) of Cr.P.C., which necessitated the complainant / ESI Corporation to prefer this appeal.
3.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondents and considered their rival submissions.
4.The charge against the accused is under Section 85(a)(i)(a) of the Act, which runs as follows:-
"Punishment for failure to pay contributions, etc_ If any person _
(a)fails to pay any contribution which under this Act he is liable to pay, or
.....

(i)where he commits an offence under clause (a), with imprisonment for a term which may extend to three yeas but_
(a)which shall not be less than one year, in case of failure to pay the employee's contribution which has been deduced by him from the employee's wages and shall also be liable to fine of ten thousand rupees; "
Ex.P.2 is the inspection report of the Inspector of ESI, who had conducted the inspection of the accused (A1) □ theatre on 22.08.1991 and 21.09.1991. At one place he would state that there were 22 employees found working at the time of his inspection within the premises of the first accused viz., Ragavendra Theatre. Over the page (page 57 of the typed set of papers) he has stated that 20 employees were found working at the time of his inspection and they were in employment for 15 months and 16 days ie., from 16.5.1990 to 31.8.1991 and that the total wages for the above said 20 employees at the rate of Rs.880/- per employee comes to Rs.2,73,083/87, for which 7.25 % of the contribution comes to Rs.19,798/58, which was directed to be paid to the ESI Corporation by the accused. But in Ex.P.14 □ Inspection Report at para 4 the total number of employees on the date of inspection were said to be 23. So the prosecution is not very clear about the total number of employees employed on the date of inspection of P.W.1 of A1 □ Theatre on 22.08.1991 and 21.09.1991. The learned trial Judge has dismissed the complaint on the ground that the prosecution has failed to furnish the name, address and other particulars of the employees, who were employed under the first accused on the date of inspection by P.W.1. The learned counsel appearing for the appellant / ESI Corporation focusing the attention of this Court to Sections 44(2) & 45 of the Act would contend that inspite of several reminders given to the accused 1 & 2, they failed to produce the relevant registers maintained by A1 to show how many employees were under the employment of A1 and related particulars. If it is so, then the complainant would have initiated criminal proceedings for the non-production of the relevant registers maintained by A1 under Sections 44(2) & 44(3) of the Act. Ex.P.20 is the show cause notice issued to the accused under Section 45(a) of the Act. Even though it was said to be despatched under RPAD to the accused, there is no material placed before the trial Court to show that the said show cause notice was served on the accused. The show cause notice reads as hereunder:-
"Because of the non-compliance of the employer under the provisions of the ESI Act from 16.5.1990 to 31.3.1992 / subsequent to the inspection of the records of the said factory / establishment on 27.4.1992, 28.5.1992, 14.6.1992 & 27.6.1992 by the Inspector, a show cause notice in Form C-18 of even no. dated 5.11.1992 was issued to the employer to show cause as to why contributions as per details of calculations furnished in Para-04 therein/as per statement enclosed should not be assed as provided under Section 54-A of the ESI Act 1948."
But there is no enclosure found in Ex.P.20 to show the details of calculation containing the ESI Contribution collected from the employees by the employer to come to a conclusion whether there is any default committed by the employer in remitting 7.25 % of contribution from out of the total ESI Contribution collected from the employees. Under such circumstance, I do not find any reason to interfere with the findings of the learned trial Judge in C.C.No.173 of 1996 on the file of the Judicial Magistrate No.II, Hosur.

5.In fine, the appeal is dismissed confirming the Judgment of the learned trial Judge in C.C.No.173 of 1996 on the file of the Court of Judicial Magistrate No.II, Hosur.

29.10.2008

Index :Yes/No
Web :Yes/No
ssv
NOTE ; ISSUE ON 30.10.2008

To,
1. The Judicial Magistrate No.II, Hosur.

2.-do- The Chief Judicial Magistrate, Dharmapuri.

A.C.ARUMUGAPERUMAL ADITYAN, J.

ssv

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